LASER, INC.

IBLA 96-97 Decided September 26, 1996

Appeal from a decision by the Nevada State Director, Bureau of Land Management, approving the Bald Mountain Mine Plan of Operations (N46-89-005P and N46-94-010P).

Appeal dismissed.

1. Administrative Procedure: Standing--Rules of Practice: Appeals: Standing to Appeal

Standing before the Board of Land Appeals is not governed by determinations on judicial standing, but by 43 CFR 4.410(a) which requires that the appellant be a party to the case and be adversely affected by a decision. Where the appellant fails to identify specific facts giving rise to a conclusion of adverse effect, the appeal will be dismissed for lack of standing.

APPEARANCES: Laura K. Williams, Esq., Portland, Oregon, and Jim Wilson, President, Laser, Inc., Gridley, California, for Laser, Inc.; Charles A. Jeannes, Esq., General Counsel and Corporate Secretary, Placer Dome U.S. Inc., San Francisco, California; Gene A. Kolkman, District Manager, Ely, Nevada, District Office, Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Laser, Incorporated (Laser), has appealed from a November 3, 1995, Record of Decision issued by the Nevada State Director, Bureau of Land Management (BLM). That decision, based upon the Bald Mountain Mine Expansion Project Final Environmental Impact Statement, approved the Bald Mountain Mine Plan of Operations (N46-89-005P and N46-94-010P) submitted by Placer Dome U.S. Inc. (Placer Dome) to expand its Bald Mountain Mine and to develop the Horseshoe/Galaxy Mine.

In its notice of appeal, Laser describes itself as a "non-profit group that evaluates the environmental and social-economic impacts from large industrial projects, including mines, in the Western United States" and asserts that its "supporting organizations have many members who live, work and seek recreation in and near the proposed site of this Bald Mountain Mine Expansion." However, its letterhead indicates its name is an acronym for "Legal and Safety Employer Research" and describes Laser as

"An Independent, Incorporated Division of the Western States Pipe Trades" located in Gridley, California.

In response to Laser's request for stay of the decision, Placer Dome filed a motion for dismissal of the appeal, asserting that Laser has failed to show standing to appeal under 43 CFR 4.410(a). By order dated March 20, 1996, we provided Laser with an opportunity to show cause why its appeal should not be dismissed for lack of standing, explaining:

> A person appealing a decision issued by a BLM official must, in accordance with 43 CFR 4.410(a), be a party to the case and also must have a legally cognizable interest that is adversely affected by the decision in issue. Resource Associates of Alaska, 114 IBLA 216, 219 (1990). What constitutes a "legally cognizable interest" was addressed by the Board in Southern Utah Wilderness Alliance, 127 IBLA 325 (1993). In that case, it was not disputed that the appellant's "organizational interest in protection of the public lands, which its members utilize, might be adversely affected by a BLM action." Id. at 329. However, the Board held that the appellant could not rely on such interest alone, but "must identify how the particular BLM action in question actually adversely affects its interest." Id. The Board has long held that such identification "must be colorable, identifying specific facts giving rise to a conclusion, rather than merely stating a conclusion." (Emphasis added). Powder River Basin Resource Council, 128 IBLA 83, 89 (1992), citing California State Lands Commission, 58 IBLA 213, 217 (1981).

Laser filed a response to our order, and Placer Dome filed a reply to Laser's response. Placer Dome later filed a request for expedited review, arguing that such review is necessary to maintain the economic performance of the Bald Mountain Mine and extend its life.

In its response, Laser argues that, in accordance with standards established by Federal case law, it has standing to bring this appeal on behalf of two members of Local 350 of the United Association of Plumbers. Laser asserts that it is supported by the contribution of its union members, and that Local 350 "voted to authorize Laser to prepare research and advocate the interests of the Local and individuals regarding the environmental and social-economic impacts of mining and industrial development in Northern Nevada, the Local's geographic territory" (Affidavit of Jim Wilson at 2). Appellant contends that it has "associational standing to assert the interests of members who are injured in fact within the zone of NEPA's [National Environmental Policy Act] protected interests" (Response to Order at 7). Laser asserts that the two union members, who regularly hunt mule deer in Nevada, will be specifically harmed by loss of habitat and interference with recreational activities.

In its reply, Placer Dome argues that Laser has inappropriately relied on judicial precedents regarding standing and has shown no real or threatened injury. For good cause shown, Placer Dome's request for expedited review is granted.

[1] The same arguments used by Laser regarding the standards to be followed in determining standing in this appeal were rejected by the Board in Animal Protection Institute of America, 118 IBLA 63, 65-66 (1991), where we stated:

> Lujan v. National Wildlife Federation and the other cases cited by BLM address standing to seek judicial review of the agency action. At issue now is standing to seek administrative review. This Board has previously recognized that the two are not synonymous and expressly rejected the notion that determinations addressing judicial standing control when seeking to determine administrative standing. High Desert Multiple-Use Coalition, 116 IBLA 47, 48-49 n.1 (1990); Colorado Open Space Council, 109 IBLA 274, 286 (1989); Pacific Coast Molybdenum, 68 IBLA 325, 332 (1982).
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> Standing before the Board of Land Appeals is governed by 43 CFR 4.410(a) and is not governed by section 702 of the Administrative Procedure Act, 5 U.S.C. § 702 (1988). BLM seeks to superimpose a zone of interest test on the Board's standing requirement that a party be adversely affected. This Board has not required an appellant to be within the urged "zone of interest" of the statute. As noted in Animal Protection Institute[, 117 IBLA 208 (1990)]: "The language 'within the meaning of the relevant statute' which is implemented by the zone of interest test is not dispositive of standing before this Board." Animal Protection Institute, [117 IBLA at 209].

Accord, Southern Utah Wilderness Alliance, 127 IBLA 325 (1993) (later vacated in Southern Utah Wilderness Alliance (On Reconsideration), 132 IBLA 91 (1995) after sufficient interests were reported.) Accordingly, determinations of judicial standing, including the "zone of interest" test, do not control adjudications of standing before this Board.

The procedural regulations at 43 CFR 4.410(a) provide that "[a]ny party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management * * * shall have a right of appeal to the Board * * *." Thus, one must be both a party to a case and have a legally cognizable interest that is adversely affected by the decision in issue. E.g., Petroleum Association of Wyoming, 133 IBLA 337 (1995); Mark S. Altman, 93 IBLA 265, 266 (1986). "If either element is lacking, an appeal must be dismissed * * *." Mark S. Altman, supra at 266; see also National Wildlife Federation v. BLM, 129 IBLA 124 (1994).

The issue here is not whether appellant is a "party to a case;" the issue is whether it is "adversely affected." To be adversely affected, the interest allegedly affected by the decision under review must be a legally cognizable interest and the allegation of adverse effect must be colorable, identifying specific facts which give rise to a conclusion regarding the adverse effect. National Wildlife Federation v. BLM, supra at 127; Powder River Basin Resource Council, 124 IBLA 83, 89 (1992). The interest need

not be an economic or property interest, but mere interest in a problem or deep concern with the issues will not suffice. Robert M. Sayre, 131 IBLA 337 (1994). We have recognized that the use of the land involved or ownership of adjacent property may constitute a sufficient interest. Southern Wilderness Alliance, supra at 327; The Wilderness Society, 110 IBLA 67, 70 (1989). Nonetheless, the threat of injury and its effect on an appellant must be more than hypothetical. Missouri Coalition for the Environment; 124 IBLA 211 (1992); George Schultz, 94 IBLA 173, 178 (1986). Standing will only be recognized where the threat of injury is real and immediate. Salmon River Concerned Citizens, 114 IBLA 344 (1990).

We conclude that Laser has not identified specific facts which give rise to a conclusion that members of the union it represents will be adversely affected. The purported threat of injury is reported as follows:

> I have personally reviewed the written statements of two individual Local 350 members. Both have lived in Nevada for years and each has enjoyed recreational activities, including mule deer hunting, in the past and each intends to continue to obtain a hunting license and hunt mule deer in future seasons. The destruction of mule deer habitat in the Bald Mountain Area will adversely impact the deer hunting opportunities throughout the hunting range in Nevada, where each of these individuals intends to continue his outdoor recreation and hunting.

(Affidavit of Jim Wilson at 3). We find that this assertion lacks an element of real and immediate injury. First, it is not shown that the interested parties use the particular lands in question for their activities. Second, the threat of adverse impact to "mule deer hunting throughout the hunting range in Nevada" is merely speculative and without factual support. Thus, we conclude the appeal must be dismissed for lack of standing.

Finally, we indicated in our order to show cause that Laser's petition for stay and request for a 60-day extension of time in which to file its statement of reasons would be addressed when we ruled on the question of Laser's standing. Given our ruling, the petition for stay and request for extension of time are denied as moot.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

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John H. Kelly
Administrative Judge

I concur:

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Gail M. Frazier
Administrative Judge